

JILL FERNANDEZ,
Plaintiff

V.

AMERICAN PRESIDENT LINES, LTD.,
Defendant

Case No. C-99-5223 WDB

SPECIAL INTERROGATORIES

Generally Applicable Instructions:

The applicable standard of proof is the "preponderance of the evidence" standard that is defined in the "Jury Instructions" that I have given you.

These "Special Interrogatories" contain legal terms and standards that are defined and explained in detail in the jury instructions. Please refer to your copies of the jury instructions if you are unsure about the meaning or content of any legal term or standard that appears in the Special Interrogatories.

The answer you give to one question determines which question you are to address next. Please attend carefully to the instructions that follow immediately after the questions; those instructions may tell you to skip some questions and to go directly to another specified question.

The first question for you to answer is presented immediately below.

MS. FERNANDEZ'S CLAIM FOR RETALIATION

1. Did Ms. Fernandez prove that she engaged in protected activity?

yes _____ no _____

If you answered "yes" go to question number 2. If you answered "no" go to the "Concluding Instruction."

**Was Ms. Fernandez subjected to
adverse employment action by a supervisor and/or an APL manager?**

2. Did Ms. Fernandez prove that she was subjected to “adverse employment action” by a “supervisor” and/or an APL manager?

Jury instruction No. 16 sets forth the criteria for identifying a “supervisor.” Jury instruction No. 18 sets forth the definition of “adverse employment action” when the person who engaged in the challenged conduct was a supervisor or an APL manager.

yes _____ no _____

If you answered “yes” go to question number 3. If you answered “no” go to question number 7.

3. Did Ms. Fernandez show that a causal link exists between her protected activity and the adverse employment action?

yes _____ no _____

If you answered “yes” go to question number 4. If you answered “no” go to question number 7.

4. Did Ms. Fernandez prove that she was “constructively discharged” as that phrase is defined in Jury Instruction No. 20?

yes _____ no _____

Go to question number 5.

5. Did American President Lines present evidence that the adverse employment action was motivated by something other than retaliation for Ms. Fernandez engaging in protected activity?

yes _____ no _____

If you answered “yes” go to question number 6. If you answered “no” go to question number 7.

6. Did Ms. Fernandez prove that the motive that APL proffered for the adverse employment action is a pretext and that the real motive for that adverse employment action was retaliation?

yes _____ no _____

Go to question number 7.

**Was Ms. Fernandez subjected to
adverse employment action by co-workers?**

7. Did Ms. Fernandez prove that she was subjected to adverse employment action by co-workers at APL?

Jury instruction No. 18 sets forth the definition of “adverse employment action” when the persons who engaged in the challenged conduct were co-workers of Ms. Fernandez (not her supervisor or an APL manager).

yes _____ no _____

If you answered “yes” go to question number 8. If you answered “no” go the instructions in *italics* that precede question number 14.

8. Did Ms. Fernandez show that a causal link exists between her protected activity and the adverse employment action by co-workers at APL?

yes _____ no _____

If you answered “yes” go to question number 9. If you answered “no” go the instructions in *italics* that precede question number 14.

9. Did Ms. Fernandez prove that she was “constructively discharged” as that phrase is defined in Jury Instruction No. 20?

yes _____ no _____

Go to the question number 10.

10. Did Ms. Fernandez prove that APL knew or should have known about the adverse employment action by co-workers?

yes _____ no _____

If you answered “yes” go to question number 11. If you answered “no” go to the instructions in *italics* that precede question number 14.

11. Did APL present evidence that the adverse employment action by co-workers was motivated by something other than retaliation for Ms. Fernandez engaging in protected activity?

yes _____ no _____

If you answered “yes” go to question number 12. If you answered “no” go to question number 13.

12. Did Ms. Fernandez prove that the motive that APL proffered for the adverse employment action by co-workers is a pretext and that the real motive for that adverse employment action was retaliation?

yes _____ no _____

If you answered “yes” go to question 13. If you answered “no” go to the instructions in *italics* that precede question number 14.

13. Did APL prove that it caused remedial measures to be taken that were reasonably likely both to stop the adverse employment action by co-workers and to persuade others to refrain from engaging in such conduct?

yes _____ no _____

Go to the instructions in *italics* that precede question number 14.

Did Ms. Fernandez suffer damages?

*You must answer question number 14 **only if**, by following the instructions, you were called upon to answer at least one of questions numbered 5, 6, or 13 **and** you answered:*

“no” to question number 5, or

“yes” to question number 6, or

“no” to question number 13.

If you were not called upon to answer questions numbered 5, 6, or 13, or if you did not answer at least one of those interrogatories as specified in the preceding paragraph, go to the “Concluding Instruction.”

14. Did Ms. Fernandez prove that she suffered emotional distress that was caused by the adverse employment action to which she was subjected?

yes _____ no _____

Go to question number 15.

15. What amount of money will reasonably compensate Ms. Fernandez for emotional distress she proved she has suffered in the past and is reasonably certain to suffer in the future as a result of the adverse employment action?

If you answered “no” to question number 14 you must award Ms.

Fernandez “nominal damages.”

\$_____

Go to “Concluding Instruction.”

CONCLUDING INSTRUCTION

If you have properly followed the instructions that accompany these “Special Interrogatories” you will have completed your deliberations when you have reached this point. Please review the “Special Interrogatories” once more to make sure that you have answered all the questions that you were called upon to answer by the instructions and that you have recorded no response to the questions that, under the instructions, there was no occasion for you to address. After you have completed this review, your foreperson should place his or her signature, the date, and his or her printed name in the appropriate spaces below.

(foreperson’s signature)

(date)

(foreperson’s name --printed)